

REMARKS

Claims 23 – 25, 27 – 33, 39, 40, 42, and 43 are pending in the present application. Claims 23 and 27 are independent.

Claims 23, 40, and 43 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,944,704 to Guarracino et al. Applicant respectfully traverses.

Claim 23 is directed to a method of incorporating zeolite in a tampon for suppression or removal of menstrual odors. The method comprises, *inter alia*, distributing zeolite granules on a first non-woven web. The zeolite granules are the sole odor-absorbing materials incorporated into the tampon.

Guarracino is directed to an absorbent article including an odor control material that is either a buffer (col. 2, l. 22-26) or a borate salt in conjunction with an acid (col. 2, l. 35-40). The odor control material can also optionally include zeolite (col. 2, l. 63).

On p. 2, the Office Action states that using zeolite alone is a known method for absorbing odors. The Office Action cites three patents to support this assertion, namely U.S. Patent Nos. 5,019,062, 5,733,272, and 5,769,833.

The status of the '062, '272, and '833 Patents in the Office Action is unclear. If they are meant to be combined with Guarracino under 35 U.S.C. §103, then even assuming that the Office Action has properly interpreted the '062, '272, and '833 Patents, the combination is improper. As stated in MPEP §2143.01(V), the proposed modification of a primary reference with secondary references cannot render the primary reference unsatisfactory for its intended purpose.

To combine Guarracino with any of the '062, '272, and '833 Patents would render it unsatisfactory for its intended purpose. Guarracino clearly states that the buffer,

which includes the disclosed borate salts, are particularly well-suited for use in the absorbent articles therein (col. 2, l. 19-21). Guarracino provides several Examples showing how effective the absorbent articles including the buffers are at removing odor (col. 7-9). The Office Action introduces the '062, '272, and '833 Patents to show that zeolites can be used alone, but to remove the buffers would completely destroy the odor-absorbing capabilities of the articles of Guarracino. This is expressly disallowed by the MPEP.

If the Office Action does not mean to combine the '062, '272, and '833 Patents with Guarracino, then Guarracino alone fails to disclose or suggest the method of claim 23. Applicants reassert the argument set forth in the prior Response, which is not addressed in the Office Action. The section of the MPEP cited by the Office Action, namely §2144.04(II), actually supports the patentability of the present claims, rather than defeating it. MPEP §2144.04(II)(A) does not apply, since the "Omission of an Element and Its Function Is Obvious" only if the function of the element is not desired. In the present application, the method of claim 23 performs the function of the borate salts and acids of Guarracino, namely to suppress or remove odors, so this function is desired. That is, since claim 23 omits an element from Guarracino (borate salts) whose function is desired, MPEP §2144.04(II)(A) is irrelevant.

Furthermore, MPEP section §2144.04(II)(B) supports the patentability of claim 23, since it holds that "Omission of an Element with Retention of the Element's Function Is an Indicia of Unobviousness" (emphasis added). In claim 23, the borate salts and acids of Guarracino are omitted, and the function of odor suppression and removal, with only the zeolite, is retained. Thus, the MPEP actually holds that claim 23 is patentable over Guarracino because of the omission of the borate salts and acids.

Accordingly, claim 23 is patentable over Guarracino, as are claims 40 and 43, which depend therefrom. Applicant respectfully requests that the rejection of claim 23, 40, and 43 be reconsidered and withdrawn.

Claims 24 and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of U.S. Patent No. 5,165,152 to Kramer et al. (hereinafter "Kramer"). Kramer fails to cure the deficiency of Guarracino to disclose or suggest the method of claim 23, and is not relied on by the Office Action to do so. Therefore, claims 24 and 25 are patentable over the cited combination of Guarracino and Kramer. Applicant respectfully requests that the rejection of claims 24 and 25 be reconsidered and withdrawn.

Claims 27-29 and 42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of Kramer, and further in view of U.S. Patent No. 4,826,497 to Marcus et al. (hereinafter "Marcus").

Independent claim 27 is directed to a method of incorporating zeolite in a tampon for suppression or removal of menstrual odors. The method comprises, *inter alia*, distributing zeolite granules on a first non-woven web. The zeolite granules are, *inter alia*, the sole odor-absorbing materials incorporated into the tampon.

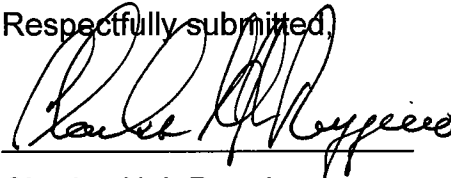
As discussed above, Guarracino fails to disclose or suggest zeolite granules that are the sole odor-absorbing materials incorporated into a tampon, as required by claim 27. The citation of the '062, '272, and '833 Patents fails to cure this deficiency, as do Kramer and Marcus. Therefore, claim 27 is patentable over the cited combination of Guarracino, Kramer, and Marcus under 35 U.S.C. 103(a). Claims 28 and 29 depend from claim 27, and are also patentable for at least the reasons provided above with respect to claim 27. Applicant respectfully requests that the rejection of claims 27-29 be reconsidered and withdrawn.

Claims 30-33 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of Kramer and Marcus, and further in view of United States Patent No. 6,030,608, to Hoyes et al., hereinafter "Hoyes." Claim 39 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of Marcus.

Claims 30-33 depend from claim 27. Claim 39 depends from claim 23. Kramer, Marcus, and Hoyes all fail to cure the deficiency of Guarracino to disclose the methods of claims 23 and 27. Therefore, claims 30-33 are patentable over the cited combination of Guarracino, Kramer, Marcus, and Hoyes, for at least the reasons provided above with respect to claim 27. For at least the reasons provided above in support of the patentability of claim 23, claim 39 is also patentable over Guarracino in view of Marcus. Applicant respectfully requests that the rejections of claims 30-33 and 39 be reconsidered and withdrawn.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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